Punishment and reform: effective Probation Services – Consultation paper
Date: 22 June 2012

Introduction

The Local Government Association (LGA) is a voluntary membership body and our member authorities cover every part of England and Wales. Together they represent over 50 million people and spend about £113 billion a year on local services. They include county councils, metropolitan district councils, English unitary authorities, London boroughs and shire district councils, along with fire authorities, police authorities, national park authorities and passenger transport authorities.

We aim to set the political agenda and speak in the national media on the issues that matter to council members.

Background

This paper provides the LGA’s and the Welsh Local Government Association’s response to the Ministry of Justice’s ‘Punishment and reform: effective Probation Services’ consultation and the changes it proposes to the delivery of probation services and the role of probation trusts.

While the focus of the consultation is clearly on the commissioning and delivery of probation services by probation trusts, councils and the communities they serve have an interest in reducing re-offending, particularly by the small number of offenders who commit a large proportion of offences. Reductions in re-offending are also something that probation services are unable to deliver on their own, when so many of the pathways out of offending are dependent on services provided by other public bodies and agencies.

Whether it is access to housing, training and education or support for offender’s families, councils have significant leadership, commissioning and delivery roles that help reduce re-offending. Given the wide focus this consultation has on the future role of probation trusts in commissioning and delivering local probation services, the LGA’s response concentrates on the issues and consultation questions most relevant to councils.

While the consultation equally applies across England and Wales, the Welsh Local Government Association highlights that the Offender Management Act 2007 enabled the four former Probation Areas/Trusts in Wales to form Wales Probation Trust in April 2010. Wales Probation is one of the largest probation trusts in England and Wales, employing over 1,050 full-time equivalent (FTE) staff who are based in 10 local delivery units (LDUs) that have been established to concentrate resources on frontline services.

Each LDU is managed by an assistant chief executive and all 10 work closely with the 22 Welsh local authorities and their community safety
partnerships, health authorities and seven area planning boards.

Effective probation services

Crime and anti-social behaviour remain key concerns for the public and, therefore, for councillors and councils. However, these are as much social policy issues – economic, environmental and social – as they are criminal justice issues. So, while prison is vital in protecting the public and punishing criminals, it is not that effective in changing the behaviour of offenders and therefore stopping more crime. We raised this point in our 2005 publication ‘Going straight’, which looked at how re-offending could be reduced. In that, we particularly highlighted the need for local multi-agency approaches which include councils, the police, health services, as well as prisons, probation and other public services, as they are best placed to understand and respond to local needs.

The emphasis in the consultation on moving from centralised to localised probation services is therefore welcome. In our view the probation service has been fettered for too long by central government prescription of targets and priorities, which have stifled the ability to innovate in the delivery of services and also to work effectively with partners. Freeing local agencies in partnership with their communities to reduce re-offending will in our view allow the creation of more effective and cost efficient probation services that do deliver reductions in re-offending. All 35 probation trusts are now configured into LDUs coterminous with local authority boundaries, reflecting the view trusts have that councils are a major strategic partner and there is a need to work with them accordingly.

We therefore also support the proposals to devolve budgets for community offender services to probation trusts for them to commission services locally, working with local partners in designing, commissioning and delivering services jointly, based on local need. The three key principles outlined in the consultation to guide the future of probation services also seem right to us: for a diverse range of organisations from all sectors to compete to provide probation services paid by results; to strengthen commissioning arrangements in probation; and, to improve the delivery and accountability of probation services at local level including commissioning jointly with partners such as local authorities.

Councils and their local partners are closest to and therefore have the best knowledge of local service providers to consider and commission them in response to local needs. Additionally, devolving community offender services budgets and commissioning to probation trusts will enable trusts to commission the best local services rather than work towards central targets, and will consequently enable more purposeful working with councils and other local partners. The LGA therefore welcomes the many references in the consultation to local approaches, as there cannot be a one size fits all approach to probation services and reducing re-offending.
Specifics in the consultation

1) What are the key issues in competing the management of offenders and how should they be resolved? For example, where should we strike the balance in deciding how far to compete offender management?

A key issue in putting out the management of offenders to public competition is that of public safety. Any changes in probation services must ensure the public are protected from potential further crimes committed by those convicted and serving their sentence.

The LGA therefore supports the Government’s proposal for probation trusts to retain responsibility for providing, in the case of all offenders, advice to court on sentencing and the enforcement of those sentences, particularly continuing to directly supervise offenders who present higher levels of risk. We commented on this latter point in our response to ‘Breaking the cycle’ White Paper published in 2010, where we also highlighted that due to the nature of the offences committed and the length of sentence, it is difficult to see how a payment by results model could be applied, for example in multi-agency public protection arrangement (MAPPA) cases.

We are, however, concerned about the possibility of the responsibility and accountability to courts for oversight of the implementation of court orders and licences relationship, currently held by probation trusts, being put out to competition. This would mean the probation service would no longer have responsibility for ensuring court orders are implemented, and this could result in those organisations then responsible to the courts being under commercial pressures which influence what they say about whether a court order has been implemented.

We are also concerned that the scope of other public sector reforms across this landscape carries the grave risk that commissioning programmes and projects to reduce re-offending will become fragmented and uncoordinated. This will undermine the benefits that payment by results can provide.

The LGA therefore believes that commissioning delivered through partnerships at a local level, like that being commissioned through the local justice reinvestment pilots, is the approach to take. Such commissioning enables partners to focus on local needs and solutions, especially when integrated to ensure statutory requirements are delivered efficiently and effectively, to manage and enforce the overall sentence, and to reduce re-offending. This approach also delivers better outcomes.

Another key issue is measuring performance within a payment by results model or through competition more generally. The Government intends probation services to achieve criminal justice outcomes beyond re-offending, such as protecting the public, ensuring offenders are properly punished and rehabilitated. So payment by results and competition more generally need to be measured in different ways than a limited binary measure to reflect these objectives, including reductions in crime, and seriousness and rates of offending. Measuring offenders’ progress over time against factors known to have a critical role in reducing re-offending is also important if they are to move on from a life involving crime. Any
measurement method will therefore need to combine these elements according to local priorities.

4) How can we best ensure that greater competition for probation services enhances local partnership arrangements, such as Integrated Offender Management?

As we outline under Question 1, while there are opportunities through these proposals for local partners to work more collaboratively with probation trusts, there is the potential danger of silo working if the number of potential agencies involved in reducing re-offending commission services separately. Therefore it is essential in the LGA’s view that probation trusts work with councils, community safety partnerships and police and crime commissioners to ensure partnership arrangements are enhanced and not hindered.

5) What would be the right balance between commissioning services at local and national levels and how can we best achieve that balance?

The LGA believes that where there are economies of scale in commissioning nationally, for example with electronic monitoring, it makes sense to do so. However, any national commissioning must ultimately respond to the needs of localities and offer localities the best value for money. Local authorities and their partner bodies in community safety partnerships are ideally placed, in working with local communities, to identify and respond to local needs. It is at this local level therefore that most commissioning should be undertaken wherever possible.

6) What are the main issues in separating the Trust commissioner role from the provision of competed services? How can these best be resolved?

There is a clear need to separate trusts’ commissioning and provider roles, particularly in terms of accountability and transparency. Local partners, stakeholders and the public must be confident that there is no conflict in these regards, to maintain and increase trust and confidence in trusts’ work. This does not necessarily mean a hard, strict split within organisations to do this however, but does require a clear distinction between commissioning and provider functions.

Councils, by way of example, have been both commissioners and providers of services for a long time, and safeguards have continually been in place, reviewed and refreshed, to separate, monitor and challenge those roles and functions, including for example scrutiny, other council committee functions, partnership steering boards and community engagement.

It would be useful for the Government to clarify whether whole trusts and/or parts thereof could compete for services, as the consultation can be read to mean both, which may or may not be the case. This becomes a particular issue where whole trusts choose to compete for services as it raises the question of who will commission services if trusts are competing to provide them.
8) How can we best ensure that the specific needs of women offenders are taken into account in commissioning services?

Probation Trusts should continue and further their multi-agency work with local authorities, other partners from all involved sectors including the voluntary and community sector working with women offenders, to take into account and address their needs.

13) How can we best strengthen local probation delivery arrangements and the local leadership and skills base?

The consultation states that the Ministry of Justice expects probation delivery structures to continue to be consistent with local authority and police force areas. However, the LGA notes that if the Ministry of Justice reduces the number of trusts, there will be potentially significant implications for co-terminosity and therefore governance, commissioning and delivery with all these organisations locally, which will need to be worked through.

14) How might we improve partnership working and local co-commissioning, especially if we have fewer, larger Trusts?

Related to the last point, the LGA notes the implications through this consultation for fewer probation trust numbers and organisation, and that sustainability, purchasing power, strong and senior commissioning capability are key issues in considering the future of probation trusts.

Fewer trusts will mean remaining ones will cover larger geographical areas, which raises significant potential issues around the ability of trusts to commission and deliver services over large geographical areas, meaning that very local, detailed needs, service provision and knowledge being overlooked, considered in less detail or not fully understood as a result.

The advent of police and crime commissioners will also mean larger trusts servicing a number of police and crime commissioners, which will complicate rather than simplify structures locally.

The structure of larger trusts would therefore have to be designed to ensure that they can engage effectively at a very local level. This would mean continuing commitment to and representation on community safety partnerships, as this will provide a means for means of assessing local needs and service provision.

15) What are the main issues for local authorities or police and crime commissioners potentially becoming more accountable over time for probation services?

We would like the Government to clarify what it envisages for police and crime commissioners becoming ‘accountable for probation services’, as it is not clear from the consultation document what this would involve. It could for example be mainly about providing democratic oversight of how probation trusts are carrying out their function, or could extend to commissioning probation trusts to deliver reducing re-offending services in an area.
In deciding whether probation trust should be more accountable to councils or to police and crime commissioners we would argue that it would be better for this role to be taken on by local authorities. In delivering the pathways out of offending such as gaining employment, receiving training/education, access to health service and substance misuse treatment, as well as access to housing, then local authorities will be responsible for providing or commissioning these services, where as police and crime commissioners will have much less of a role and understanding of the delivery of these services. Given that probation trusts are already accountable to councils’ crime and disorder overview and scrutiny committees as responsible authorities on community safety partnerships it would be sensible for this role to be extended, with councils having responsibility for probation services.

**Conclusion**

In summary, for all the reasons outlined above, the LGA supports:

- the Government’s change in emphasis from centralised to localised probation services;
- local multi-agency approaches including councils, police, health, prisons, probation and other public services to reduce re-offending, which is as much a social as well as a criminal justice policy issue;
- the Government’s plans to devolve budgets for community offender services to probation trusts for them to commission the best services locally with partners;
- the Government’s proposal for trusts to retain responsibility for providing advice to court on sentencing and the enforcement of those sentences to ensure further crimes are not committed by those convicted and serving their sentence;
- the need to separate trusts’ commissioning and provider roles, particularly in terms of accountability and transparency, although this does not have to be a hard, strict split as we outline in our response to question 6;
- local authorities assuming responsibility in the longer term for holding probation trusts to account.

The LGA is concerned however that:

- With a number of national and local commissioners involved, there is a grave risk that programmes and projects to reduce re-offending will become fragmented and uncoordinated, undermining potential benefits.
- Fewer potential trusts will mean remaining ones covering larger geographical areas, with significant potential difficulties in being able to commission and deliver services over large geographical areas without local links being lost.